

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

PAMELA ERWIN,

Petitioner,

v.

WILLIAM REUBART, *et al.*,

Respondents.

Case No. 2:23-cv-00697-ART-NJK

ORDER

Pamela Erwin, an individual incarcerated at Nevada's Florence McClure Women's Correctional Center, initiated this action, *pro se*, on May 4, 2023. In an order entered on May 8, 2023 (ECF No. 3), the Court gave Erwin 90 days—until August 7, 2023 (August 6 was a Sunday)—to file an application to proceed *in forma pauperis* and a petition for writ of habeas corpus. On July 31, 2023, Erwin filed her habeas petition (ECF No. 4). Erwin did not file an application to proceed *in forma pauperis* by August 7, however, and on August 14, 2023, the Court, acting *sua sponte*, extended the time for Erwin to file an *in forma pauperis* application to October 13, 2023 (ECF No. 5). On September 7, 2023, Erwin filed an application to proceed *in forma pauperis* (ECF No. 6), but that application is incomplete because it does not include the required financial certificate. *See* LSR 1-2. Erwin included a note on her *in forma pauperis* application saying that she was in the process of obtaining a financial certificate and would file it when she received it; however, Erwin did not file the financial certificate, and she did not take any other action, by the October 13, 2023, deadline.

The Court will, therefore, deny Erwin's September 7, 2023, *in forma pauperis* application and will set a new deadline for payment of the filing fee or a new application to proceed *in forma pauperis*, after counsel appears for her.

1 State prisoners applying for habeas corpus relief are not entitled to
2 appointed counsel unless the circumstances indicate that appointed counsel is
3 necessary to prevent due process violations. *Chaney v. Lewis*, 801 F.2d 1191,
4 1196 (9th Cir. 1986) (citing *Kreiling v. Field*, 431 F.2d 638, 640 (9th Cir. 1970)
5 (per curiam)). The court may, however, appoint counsel at any stage of the
6 proceedings if the interests of justice so require. See 18 U.S.C. § 3006A; see also
7 Rule 8(c), Rules Governing § 2254 Cases; *Chaney*, 801 F.2d at 1196. It appears
8 that appointment of counsel is warranted in this case. The Court will therefore
9 grant Erwin's motion for appointment of counsel (ECF No. 1-3) and appoint the
10 Federal Public Defender for the District of Nevada (FPD) to represent her.

11 The Court has examined Erwin's habeas petition (ECF No. 4) pursuant to
12 Rule 4 of the Rules Governing Section 2254 Cases in the United States District
13 Courts and determines that it merits service upon the Respondents. The Court
14 will order the petition served upon the Respondents, and will direct the
15 Respondents to appear, but will not require any further action on the part of the
16 Respondents at this time.

17 It is therefore ordered that Petitioner's Application to Proceed *in Forma*
18 *Pauperis* (ECF No. 4) is denied.

19 It is further ordered that the Clerk of the Court is directed to separately file
20 the Motion for Appointment of Counsel (ECF No. 1-3).

21 It is further ordered that Petitioner's Motion for Appointment of Counsel
22 (ECF No. 1-3) is granted. The Federal Public Defender for the District of Nevada
23 (FPD) is appointed to represent Petitioner. If the FPD is unable to represent
24 Petitioner, because of a conflict of interest or any other reason, alternate counsel
25 will be appointed. Counsel will represent Petitioner in all federal court
26 proceedings relating to this matter, unless allowed to withdraw.

27 It is further ordered that the Clerk of the Court is directed to electronically
28 serve upon the FPD a copy of this order, together with a copy of the Petition for

1 Writ of Habeas Corpus (ECF No. 4).

2 It is further ordered that the FPD will have 30 days from the date of this
3 order to file a notice of appearance, or to indicate to the Court its inability to
4 represent Petitioner in this case.

5 It is further ordered that the Court will set a deadline for payment of the
6 filing fee or the filing of a new *in forma pauperis* motion after counsel appears for
7 Petitioner.

8 It is further ordered that the Clerk of the Court is directed to add Aaron
9 Ford, Attorney General of the State of Nevada, as counsel for Respondents and to
10 provide Respondents an electronic copy of all items previously filed in this case
11 by regenerating the Notice of Electronic Filing to the office of the Attorney General
12 only.

13 It is further ordered that Respondents will have 30 days from the date of
14 this order to appear in this action. Respondents will not be required to respond
15 to the habeas petition at this time.

16 It is further ordered that, pursuant to Federal Rule of Civil Procedure 25(d),
17 William Reubart is substituted for “Gabriella Najara” as the respondent warden.
18 The Clerk of the Court is directed to update the docket to reflect this change.

19 DATED THIS 26th day of October 2023.

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22 ANNE R. TRAUM
23 UNITED STATES DISTRICT JUDGE
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